

IN THE UNITED STATES DISTRICT COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. THOMAS AND ST. JOHN

UNITED STATES OF AMERICA,

Plaintiff,

v.

GOVERNMENT OF THE VIRGIN ISLANDS

Defendant

CIVIL ACTION NO.

COMPLAINT

The United States of America ("United States"), by authority of the Attorney General of the United States and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), alleges as follows:

NATURE OF ACTION

1. This is a civil action brought pursuant to Section 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, ("CERCLA"), 42 U.S.C. § 9607. The United States seeks to recover response costs that have been incurred in connection with the release or threatened release of hazardous substances into the environment at or from the following sites: the Virgin Islands Department of Health Site in Charlotte Amalie, St. Thomas, Virgin Islands ("DOH Site"); the Virgin Islands Sub Base Site in St. Thomas, Virgin Islands ("the Sub Base Site"); and the Virgin Islands Department of Agriculture Site in St. Croix, Virgin Islands ("DOA Site").

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to Sections 107(a) and 113(b) of CERCLA, 42 U.S.C. §§ 9607(a) and 9613(b), and 28 U.S.C. §§1331 and 1345.

3. Venue is proper in this district pursuant to Section 113(b) of CERCLA, 42 U.S.C. § 9613(b), and 28 U.S.C. §1391(b), as the actual or threatened release of hazardous substances that gives rise to the claims occurred in this judicial district.

DEFENDANT

4. Defendant Government of the Virgin Islands is a territorial government of the United States, and is a “person” within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

DESCRIPTION OF SITES AND FACTUAL BACKGROUND

VIRGIN ISLANDS DEPARTMENT OF HEALTH SITE (“DOH SITE”)

5. The DOH Site is a pesticide storage building and surrounding two-acre area at the Old Municipal Facility in Charlotte Amalie, St. Thomas, U.S. Virgin Islands.

6. The DOH Site is located in a residential and office area. The DOH Site is adjacent to an office building, dozens of residential properties and a sports stadium. Neighboring properties include preschool and daycare facilities. Census statistics compiled in 1990 indicate a population of 8340 persons within a one-mile area.

7. The DOH Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C.

§ 9601(9).

8. In March 27, 1998, the Virgin Islands Department of Health verbally asked the EPA to assist in the removal and proper disposal of chemicals stored at the DOH Site. The Virgin Islands Department of Health confirmed this request in a letter to EPA dated April 14, 1998.

9. In May to July 1998, EPA emergency response personnel investigated the DOH Site including the pesticides storage building. They consistently detected a strong odor of pesticides along a public street downwind of the DOH Site. They found inside the building hundreds of small containers of pesticides and chemicals, stacked in boxes on top of each other with the bottom layers crushed. Some of the containers were split open with their contents spilled onto the floor. The interior of the building was exposed to the elements. Its roof leaked rainwater that could come into contact with the chemicals and flow along the floor and out of the building through its doors. The walls of the building included shutters that were open to the outside air.

10. In all, EPA found at the DOH Site an estimated 858 gallons of liquid pesticides and 1,782 pounds of solid pesticides, contained in five drums and approximately 579 smaller containers. EPA also found 1042 aerosol containers of spray pesticides, totaling 14,076 ounces. The pesticides and chemicals included malathion, chlordane, calcium hypochlorite, pyrethrin and chlorpyrifos. These substances are acutely and chronically toxic or corrosive.

11. The substances described in the preceding paragraph are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

12. The conditions at the DOH Site indicated that there was a “release” or “threatened release” of hazardous substances into the environment at or from the DOH Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

13. In July 1998, EPA determined that a physical removal action should be conducted at the DOH Site.

14. From July 1998 through October 1998, EPA conducted a removal action at the DOH Site which included the offsite disposal of four 55-gallon drums, 241 smaller drums and containers, and twelve aerosols of various pesticides.

15. The actions taken by the United States in connection with the DOH Site constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

16. The United States has incurred unreimbursed response costs in connection with the DOH Site.

17. The response costs incurred by the United States in connection with the DOH Site were not inconsistent with the National Contingency Plan, which was promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300, et seq.

VIRGIN ISLANDS SUB BASE SITE (“SUB BASE SITE”)

18. The Sub Base Site is an abandoned chemical storage warehouse and surrounding area of approximately one acre in southwest Charlotte Amalie, St. Thomas, Virgin Islands. The Government of the Virgin Islands used the Sub Base Site to store chemicals for water treatment, paint for highway projects, and petroleum-based oils and lubricants. The Sub Base Site is adjacent to office buildings in a heavily populated commercial area.

19. The Sub Base Site is a "facility" as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

20. In April 1999, EPA inspected the Sub Base Site and found in the abandoned warehouse 75 50-lb rusted drums of powdered sodium hypochlorite bleaching compound, approximately 50 rusted 5-gallon pails of flammable solvents, approximately 20 deteriorated 55-gallon drums of unknown chemicals, 18 drums of unknown substances leaking onto the ground and 10 gallons of drain opener labeled "poison" in an abandoned warehouse. The contents of the containers had spilled and leaked onto the ground inside and outside the warehouse. Homeless persons were living in the building.

21. EPA found that the chemicals at the Sub Base Site included sodium hydroxide and calcium hypochlorite. These chemicals are acutely and chronically toxic, corrosive or ignitable.

22. The substances described in the preceding paragraph are "hazardous substances" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

23. In June 1999, the Virgin Islands Department of Property and Procurement requested that EPA stabilize the Sub Base Site and clean up hazardous substances at the site.

24. On June 22, 1999, EPA began to stabilize and secure the Sub Base Site. On or about August 7, 1999, EPA began removing chemical containers and shipping them off-site for disposal. On or about November 23, 1999, EPA completed removal activities.

25. The conditions at the Sub Base Site constituted a "release" or "threatened release" of hazardous substances into the environment at or from the Sub Base Site within the meaning of

Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

26. The actions taken by the United States at the Sub Base Site constitute “response” actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

27. The United States has incurred unreimbursed response costs in connection with the removal action for the Sub Base Site.

28. The response costs incurred by the United States in connection with the Sub Base Site were not inconsistent with the National Contingency Plan, which was promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300, et seq.

VIRGIN ISLANDS DEPARTMENT OF AGRICULTURE SITE (“DOA SITE”)

29. The DOA Site is a one-quarter acre area at the Department of Agriculture facility located off of Route 70 in Estate Lowe Love, Kingshill, St. Croix, Virgin Islands.

30. The DOA Site is adjacent to offices and agricultural properties.

31. The DOA Site is a “facility” as defined in Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

32. In November 1999, the Government of the Virgin Islands verbally asked EPA to remove 28 drums of malathion pesticides from the DOA Site. The Government of the Virgin Islands confirmed the request in a letter to EPA dated December 22, 1999.

33. On November 20, 1999, EPA assessed the DOA Site and found that the 28 55-gallon drums of malathion pesticides were located outside a building, exposed to the elements. The drums were in poor condition. Some of the drums were severely corroded and open to the

rain, resulting in the pesticide spilling onto the ground. Malathion is a "hazardous substance" within the meaning of Section 101(14) of CERCLA, 42 U.S.C. § 9601(14).

34. The conditions at the DOA Site demonstrated that there was a release or threat of release of hazardous substances into the environment at or from the DOA Site.

35. On November 20, 1999, EPA determined that a removal action should be conducted at the DOA Site.

36. From January 2000 through March 2000, EPA conducted a removal action at the DOA Site whereby the drums were removed and shipped to an off-site disposal facility, and malathion-contaminated soil was excavated, placed in boxes and shipped to an off-site disposal facility.

37. There was a "release" or "threatened release" of hazardous substances at or from the DOA Site within the meaning of Section 101(22) of CERCLA, 42 U.S.C. § 9601(22).

38. The actions taken by the United States constitute "response" actions within the meaning of Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

39. The United States has incurred unreimbursed response costs at the DOA Site.

40. The response costs incurred by the United States in connection with the DOA Site were not inconsistent with the National Contingency Plan, which was promulgated under Section 105 of CERCLA, 42 U.S.C. § 9605, and is codified at 40 C.F.R. Part 300, et seq.

CLAIM FOR RELIEF

41. Paragraphs 1 through 40 are re-alleged and incorporated herein by reference.

42. Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), provides, in pertinent part:

1. the owner and operator of a . . . facility,
2. any person who at the time of disposal of any hazardous substance owned or operated any facility at which such hazardous substances were disposed of,
3. any person who by contract, agreement, or otherwise arranged for disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances owned or possessed by such person, by any other party or entity, at any facility . . . owned or operated by another party or entity and containing such hazardous substances, and
4. any person who accepts or accepted any hazardous substances for transport to disposal or treatment facilities . . . or sites selected by such person, from which there is a release, or a threatened release which causes the incurrence of response costs, of a hazardous substance, shall be liable for –
 - (A) all costs of removal or remedial action incurred by the United States Government . . . not inconsistent with the national contingency plan. . .

43. The Government of the Virgin Islands is liable, pursuant to Section 107(a)(1) of CERCLA, 42 U.S.C. § 9607(a)(1), as the current owner and operator of the DOH Site, the Sub Base Site and the DOA Site.

44. The Government of the Virgin Islands is liable, pursuant to Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2), as the owner and operator of the DOH Site, the Sub Base Site and the DOA Site at the time hazardous substances were disposed of within the meaning of Section 107(a)(2) of CERCLA, 42 U.S.C. § 9607(a)(2).

45. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendant is liable to the United States for all costs including prejudgment interest incurred and to be incurred by the United States in connection with removals at the DOH Site, the Sub Base Site and the DOA Site.

PRAYER FOR RELIEF

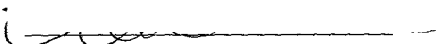
WHEREFORE, Plaintiff, United States of America, respectfully requests that this Court:

(a) Enter judgment against the Defendant for response costs incurred by the United States in connection with removal actions at the DOH Site, the Sub Base Site and the DOA Site, and interest thereon;

(b) Grant such relief as the Court deems just and proper.

Respectfully submitted,

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